



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION
Case #: FOP - 174601

PRELIMINARY RECITALS

On May 24, 2016, the above petitioner filed a hearing request under Wis. Admin. Code §HA 3.03, to challenge a decision by the Crawford County Department of Human Services regarding FoodShare benefits (FS). The hearing was held on June 8, 2016, by telephone.

The issue for determination is whether the agency correctly determined a FS overpayment of \$8,455.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED]
Crawford County Department of Human Services
225 N Beaumont Rd., Suite 326
[REDACTED]

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Crawford County.
2. [REDACTED] and [REDACTED] were members of a FS case in 2014 through 2016.

3. O'Brien and Associates investigators conducted an investigation and determined that there had been a FS overpayment. O'Brien also calculated the amount of the overpayment.
4. Notices of overissuance were issued to petitioner for the following claims: # [REDACTED] (\$4,653 for the period from 4/9/15 to 3/31/16), # [REDACTED] (\$514 for the period from 4/1/16 to 4/30/16), and # [REDACTED] (\$3,288 for the period from 4/1/14 to 9/30/14).
5. Petitioner appealed.

DISCUSSION

In this case, the agency contracted with O'Brien and Associates investigation firm to investigate a FS overpayment related to [REDACTED] living in the household with Lestina, and to do the calculation of the overpayment amount. But, no one from the investigation firm appeared at the hearing. The agency representative is the only person who appeared. The agency sought to have the O'Brien investigative report entered into evidence. It was admitted but carries little weight. Furthermore, the O'Brien investigator who completed the calculation of the overpaid amount also did not appear. None of the people that the investigator spoke with were witnesses at hearing either. The investigator did not appear to attest to his efforts or the accuracy of the report. The Department representative instead offered the written report as the evidence to overcome the vocal denials of the petitioner who appeared in person.

At a fair hearing on an overpayment of FS, it is the burden of the agency to establish that the overpayment is correct. The agency must do that with evidence at hearing.

The written report on which the Department relies is hearsay. I am unable to assess the credibility or biases of those who the investigator claims he spoke with. They did not appear and could not be cross-examined. Does each have reason to lie? I have no idea and cannot explore that. Furthermore, the investigator himself did not appear. I cannot place weight in an investigative report when the investigator similarly cannot explain the basis for his report and its conclusions. Without him appearing before me, I am unable to determine whether he purports to be an objective fact-gatherer or a partisan witness who included only selective facts in her report.

In circumstances such as these, when the reliability and probative force of hearsay evidence is suspect and that hearsay evidence is to form the sole basis for a finding of fact, the Wisconsin Supreme Court has held that uncorroborated hearsay does not constitute substantial evidence upon which to base a finding of fact. *Gehin v. Wisconsin Group Ins. Bd.*, 2005 WI 16, ¶¶ 53-56 & 58, 278 Wis. 2d 111, 692 N.W.2d 572; See also, *Williams v. Housing Auth. of City of Milwaukee*, 2010 WI App 14, ¶¶ 14 & 19, 323 Wis. 2d 179, 187 & 189, 779 N.W.2d 185 ("[u]ncorroborated hearsay evidence, even if admissible, does not by itself constitute substantial evidence."). In these circumstances the Wisconsin Supreme Court has held that hearsay must be corroborated by nonhearsay evidence. *Gehin*, ¶¶ 82 & 92. I cannot make a finding of fact that the husband is part of the food unit based solely on the hearsay report. The case law prohibits me from doing so in this case because the Department offered no corroboration. The only corroboration for the assertions in the report was supplied by the testimony of the petitioner himself.

Ultimately then, the only substantial evidence I have to consider in support of findings of fact relating to the living circumstances is the testimony provided by the co-petitioners. Petitioner [REDACTED] made admissions which support a portion of the overpayment. I will accept the concession and admission of petitioner with regard to the period of time he stated was a correct determination. That concession related to the period from December 2015 to the end of April 2016. The agency must recalculate the overpayment that is applicable to that period only and issue a new overpayment notice to petitioner.

CONCLUSIONS OF LAW

The agency failed to meet its burden to establish that it correctly determined a FS overpayment but for the period conceded by petitioner from December 2015 onward.

THEREFORE, it is

ORDERED

This matter is remanded to the Department and its county agency with instructions to reverse the previous findings of overpayment except for the period from December 1, 2015 to April 31, 2016 which I affirm. New notice of the amount of that overpayment shall be issued, with new appeal rights. These actions must be completed within ten days.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

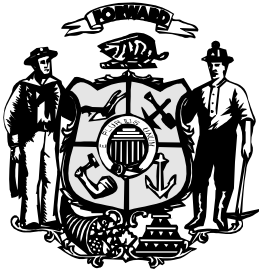
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 22nd day of July, 2016

\s _____
John P. Tedesco
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on July 22, 2016.

Crawford County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability